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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Effects of economic reform policies and foreign debt on the full enjoyment of all human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, Bernard A. N. Mudho, submitted pursuant to Human Rights Council resolution 5/1.

* A/62/150.



Report of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights

Summary

The present report is submitted in accordance with Commission on Human Rights resolution 2005/19 and Human Rights Council resolution 5/1, which extended the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights.

The independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights submits the present report in order to provide the General Assembly with an update on progress in the finalization of the draft guidelines to be followed by both States and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments.

As mandated by the Human Rights Council in its decision 2/109, the Office of the High Commissioner for Human Rights organized an expert consultation to seek the views of a variety of stakeholders in order to facilitate the drafting of the final guidelines by the independent expert. This expert consultation took place on 9 and 10 July 2007.

The expert consultation was attended by representatives of United Nations organizations, the Committee on Economic, Social and Cultural Rights, the World Bank, the International Monetary Fund, the World Trade Organization, academics and members of civil society.

The present report reflects the discussions that took place during the expert consultation. It should be noted that all the experts participated in the consultation in their personal capacities and the views expressed did not necessarily reflect the official positions or views of their respective institutions or organizations.

The independent expert will now proceed with reviewing and finalizing the text of the guidelines and their submission to the Human Rights Council in due course.

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I. Introduction

A. Overview

1. The present report is submitted in accordance with Commission on Human Rights resolution 2005/19 and Human Rights Council resolution 5/1, which extended the mandate of the independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights.
2. In its resolutions 2004/18 and 2005/19, the Commission on Human Rights requested the independent expert, in the discharge of his mandate, to draft general guidelines to be followed by both States and public, national and international financial institutions (IFIs) in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments. The Commission further requested the independent expert to present the final draft of such general guidelines to the Commission at its sixty-second session.
3. Pursuant to decision 2/109, the Human Rights Council requested the Office of the High Commissioner for Human Rights (OHCHR) to convene an expert consultation to contribute to the ongoing process of developing the draft guidelines, inviting relevant experts in the areas of human rights, economic reform policies and foreign debt as well as representatives of Member States, relevant United Nations organizations, IFIs and civil society.
4. The expert consultation took place on 9 and 10 July 2007 in Geneva. Taking the outcome of the consultation duly into account, the independent expert will now proceed with the drafting of the final text and will submit the guidelines to the Human Rights Council as requested.

B. Outline of the guidelines

5. As noted in paragraph 2 above, the guidelines are intended to serve as a voluntary policy framework for States as well as national, regional and IFIs to help them take into account human rights obligations, in particular those relevant to economic, social and cultural rights, in their assessments of the implications of debt repayments operations and economic reform policies and their impact on the protection and implementation of these rights.

1. Foreign debt

6. Since the notion of "debt sustainability" has been the basic premise for the consideration of the human rights impact of foreign debt, the notion has featured prominently in the formulation of relevant guidelines. In this context, research and annual consultations with the World Bank and the International Monetary Fund (IMF) revealed that the two Bretton Woods institutions have recently modified their definition of debt sustainability from one of reliance on static indicators to a more forward-looking analytical tool. However, the key objective of even this new understanding of debt sustainability remains ensuring the financial ability to service debt rather than the ability to achieve wider development or human rights objectives.

7. In contrast, the main thrust of the draft guidelines advocates an understanding of debt sustainability whereby a debt situation should be considered unsustainable in human rights terms whenever a country does not have sufficient resources to service its debt and comply with the core minimum standards of human rights at the same time. Thus, whenever a situation arises in which a State cannot service its debts and also meet its core minimum human rights obligations, both creditors and borrowers ought to be obliged to enter into negotiations, to redress the situation, for example, through debt relief, agreement on more favourable debt service terms or a reorientation of financial cooperation towards highly concessional loans and grants.

8. The guidelines, therefore, ideally seek to provide parameters for a clear and unambiguous definition of the required minimum economic, social and cultural human rights standards and objectively measurable quantification of resources needed to achieve this minimum level. At the same time, due cognizance must be taken of the fact that a generalized or universal approach to the notion of debt sustainability would not be applicable in all cases. Consequently, each country will need to assess the availability of its resources and specific priorities, taking due regard of its human rights national plan.

9. Hence, the draft guidelines endeavour to provide policymakers with a tentative operational solution that can be used during the transitional period to full compliance with human rights obligations. In this context, the Millennium Development Goals would seem to be the most accepted framework of economic and social development objectives at the present time. It is, however, necessary to bear in mind that there are significant overlaps between economic, social and cultural rights and the problems targeted by the Goals and the fact that the achievement of the Goals alone does not equate with the full realization of economic, social and cultural rights. However, the Goals are currently the closest operational and internationally recognized reference framework that can be used to assess progress in the implementation of such rights. Consequently, during a transition period, if a country is not able to service its debt and achieve the Goals on time, it is logical that its debt situation should be considered unsustainable.

10. It is acknowledged that additional resources previously destined to service loan repayments and debts that accrue to countries under debt cancellation or debt relief will not automatically guarantee the fulfilment of human rights unless the countries concerned formulate and implement rights-based policies and budget allocations. Therefore, the guidelines suggest that human rights norms and standards be integrated in the national budgeting processes. In the same context, and in a spirit of "shared responsibility" of creditors and borrowers, the guidelines call on creditors to provide technical support assistance, where necessary and requested, to strengthen budgeting processes and the debt management capacity of debtors.

2. Economic reform policies

11. Many economic reform policy elements such as macroeconomic stability, privatization and trade reform can actually help developing countries to comply with human rights obligations. The obligation to "adopt policies and techniques to achieve steady economic, social and cultural development and full and productive employment",¹ which is part of the right to work, is only one example. On the other

¹ International Covenant on Economic, Social and Cultural Rights, art. 6 (2).

hand, there is a strong need to safeguard human rights, particularly of vulnerable groups, during reform processes. As affirmed by the Commission on Human Rights, "the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies, growth programmes and economic reforms arising from the debt".² The guidelines suggest ways to harmonize both requirements.

12. Traditional economic and social impact studies should be complemented with economic, social and cultural rights impact assessments, taking into account the particular situation of the concerned countries set against their human rights obligations.

13. The draft guidelines identify several standard areas of economic reform policies, such as macroeconomic stabilization, privatization, trade, governance and social sector reform. However, the impact of concrete policy measures in these areas depends largely on each country-specific context; hence, generalized statements on the conformity of these measures with human rights cannot be strictly made, nor are they justifiable. Some examples would include:

(a) A policy targeting very low inflation rates can be harmful to the fulfilment of economic and social rights as it is likely to restrict social spending. However, in a different general economic context the same policy might be conducive to such fulfilment if it preserves real wages and avoids undermining the livelihoods of the poor;

(b) Privatization of State enterprises can in some cases restrict access to basic services. However, even privatized enterprises can ensure availability of basic services to all, as long as a human rights-consistent privatization framework is negotiated with the new private owner and efficiently monitored and enforced by the Government. If the Government has this capacity, privatization can lead to higher output and consequently better availability of services to all;

(c) The impact of any trade liberalization measure in developing countries cannot be generally qualified as constructive or harmful. The outcome depends, among other elements, on sector- or even product-specific decisions regarding the scope and sequencing of trade reform as well as the quality of safeguarding clauses;

14. As a consequence, the draft guidelines are very cautious with regard to concrete and straightforward policy recommendations. Instead, they seek to identify key policy issues that ought to be considered when analysing the human rights impact of reform measures. This is equally the case for a rights-based process of designing economic reform policies. While it is generally recognized that any economic reform should be formulated in a participatory and transparent way, with relevant information made available in a timely manner and with the knowledge of the public, it would not be easy to elaborate specific universal norms regarding such processes.

² *Official Records of the Economic and Social Council, 2001, Supplement No. 3 (E/2001/23-E/CN.4/2001/167), chap. II, sect. A, resolution 2001/27, para. 7.*

C. Expert consultation

15. The objective of the expert consultation was (a) to provide insights into how foreign debt and debt relief programmes, as well as different kinds of economic reform policies, impact on the capacity of States to comply with human rights standards; and (b) to identify suggestions for useful recommendations to States, international organizations and other stakeholders regarding possible policy elements to promote and protect human rights in developing countries while implementing debt and economic reform programmes. The agenda of the consultation is contained in annex I.

16. The next section of the report summarizes the discussion of the experts, who participated in the consultation in their personal capacity.

17. The consultation took place over two days, with experts from the Committee on Economic, Social and Cultural Rights, the United Nations Population Fund (UNFPA), the Food and Agriculture Organization of the United Nations (FAO), the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), as well as academics and civil society representatives. The full list of participants is contained in annex II.

18. The first day's discussions focused on selected debt and economic reform policy elements and their consistency with human rights principles. Experts used the consultation forum to hear and share different perspectives from peers from IFIs, academia and non-governmental organizations on their views on economic, social and cultural rights and minimum standards, debt sustainability, trade and macroeconomic stabilization, privatization and social sectors.

19. The second day's discussions sought to consolidate the review of policy impacts based on the discussions of the first day and consider them in terms of obligations of human rights duty-bearers and other stakeholders in the debt and economic reform process.

II. General remarks on objectives, content and process

20. A common thread in their general observations was the stress placed by many of the experts on the fact that the guidelines focused on human rights and not on sound economic policies. The future guidelines would seek to provide indications of how economic reform policies and foreign debt programmes should be designed and implemented in order not to undermine obligations for the realization of fundamental economic, social and cultural rights. The experts discussed the notion of trying to set "minimum standards" of economic, social and cultural rights; most experts agreed that the elaboration of such standards by States themselves would provide a useful operational tool to measure the impact of economic reforms on economic, social and cultural rights and ensure coherence between States' policies and obligations.

21. The experts agreed that a uniform framework or a global approach would not be applicable to all countries. "Core obligations" depended on the specific situation of each country and it should be up to the country to set benchmarks and indicators. It should be noted that "core obligations" were minimum obligations and did not constitute the full realization of economic, social and cultural rights. States and

national, regional and international financial institutions should be mindful of the fact that "core obligations" meant that essential social services such as education, health and social services could not be sacrificed when countries were engaged in debt or loan repayment.

22. Several experts commented that it would be useful for the guidelines to spell out the role of multilateral institutions such as the World Bank, the International Monetary Fund and WTO, as well as the role of transnational corporations. Some experts also noted the importance of human rights impact assessments as a policy tool and called for the implementation of the agreed conclusions and recommendations of the Working Group on the Right to Development in that respect.

23. One expert argued that the International Covenant on Economic, Social and Cultural Rights and the general comments adopted by its monitoring committee sought to establish the content of the rights involved and could develop minimum standards. The Covenant provided for a series of minimum obligations, minimum standards should be defined by the Committee on Economic, Social and Cultural Rights in a manner that corresponded to different situations. Experts noted the advantage of the independent expert on economic reform policies and foreign debt in drafting the guidelines, given that the special procedures mechanism had a more specific mandate and flexible working methods and could therefore continue setting minimum standards. In comparison, the Committee did not possess the ability to be more flexible and thus had focused on minimum content.

24. Many of the experts suggested that although the Millennium Development Goals were an internationally accepted framework, they should be used as a reference point and not be seen as providing "minimum standards" for economic, social and cultural rights. One expert pointed out that a criticism of the Millennium Development Goals was that they did not address problems of discrimination. In addition, the Goals did not completely reflect a rights-based approach.

25. The experts noted that although the guidelines would be very useful to policymakers and other stakeholders, the monitoring and enforceability of the guidelines would remain an open question.

III. Human rights and foreign debt

26. During the expert consultation, one of the experts presented a short overview of the view and operative framework on debt sustainability of the World Bank and IMF. The Bank and the Fund had adopted a joint framework for debt sustainability assessments in low-income countries. When a debt exceeded a country's capacity to pay, it became an unsustainable debt. The main aim of a debt sustainability framework was to guide the decisions of low-income countries to borrow in a way that matched their needs for funds with their current and future ability to service the debt, taking into account country-specific circumstances. The debt sustainability framework as formulated by the Bretton Woods institutions was meant to serve as an early warning system of the potential risk of debt distress in order to allow preventive action to be taken, if needed.

27. The World Bank-IMF debt sustainability framework classified countries into one of three policy performance categories using the Bank's Country Policy and

Institutional Assessment index. The framework was not meant to set clear ceilings, but instead to provide benchmarks that donors and countries could use as guides to the limits that should be taken into account when entering into a loan agreement. The framework did not impose a limit on the total assistance that countries should receive in order to achieve their development objectives. Countries that had low debt ratios were not expected or encouraged to borrow up to their thresholds.

28. A participant argued that the draft guidelines did not encapsulate the notion of an "enhanced definition" of debt sustainability. He argued that what was needed was not a new definition of debt sustainability, but guidance on how to calculate the value of external assistance that would be required of a country while enabling it also to comply with its human rights obligations. He noted that while it was important to fulfil human rights obligations, macroeconomic and financial stability were also important.

29. The participant stressed that the debt sustainability framework developed by the Bretton Woods institutions had not been elaborated only between the institutions but with the participation of State authorities in order to assist countries in developing home-grown borrowing strategies.

30. At present, the international community had not developed criteria for defining illegitimate debt. Rather, the international community had focused on ways to increase governance and transparency in borrowing as well as lending decisions and to foster the establishment of appropriate legal and governmental responsibility.

A. Impact of debt sustainability on human rights

31. The experts noted that human rights created a legal obligation and were not a concept that should be taken into account only when possible or convenient. Although the Bretton Woods institutions still retained powerful influence in the formulation of the modalities of the debt sustainability framework, the institutions could look at how human rights could be incorporated into the framework. Instead, the main priority of IMF was to ensure that countries could service their debt.

32. The challenge for the international community was to agree on how to calculate the cost of upholding minimum standards of human rights within the context of a debt sustainability framework. One expert commented that it should be the role of the United Nations to come up with an agreed framework that was applicable to a variety of stakeholders.

33. Sustainability of debt should refer to the capacity of a country to service its debt without having to sacrifice the protection and promotion of human rights. A participant argued that IMF believed that debt was unsustainable at some point and that a country should not stay in debt forever. It was estimated that half of the least developed countries continued to pay their debt at the expense of their ability to fulfil their human rights obligations.

34. Although the Heavily Indebted Poor Countries (HIPC) and the Multilateral Debt Relief Initiatives were welcomed by several countries, debt relief did not mean that countries should no longer be eligible for aid. Debt relief did not automatically ensure ability to fulfil a country's human rights obligations. However, it could assist countries in freeing resources for the realization of economic, social and cultural rights and help in the alleviation of poverty.

35. As recalled in the 2005 World Summit Outcome, the international community had decided to “emphasize that debt sustainability is essential for underpinning growth and underline the importance of debt sustainability to the efforts to achieve national development goals, including the Millennium Development Goals, recognizing the key role that debt relief can play in liberating resources that can be directed towards activities consistent with poverty eradication, sustained economic growth and sustainable development”.³

B. The Millennium Development Goals as an interim benchmark for debt sustainability

36. Some of the criticisms of the debt sustainability framework included the absence of consideration of the Millennium Development Goals. The experts argued that the IFIs could use the Goals as they were the closest tool to an operational and internationally recognized framework that currently existed. However, it had also been criticized for placing too much emphasis on “macro” or aggregated figures.

37. In addition, it was argued that disparities were not addressed and that the Goals represented “temporary targets” and not rights. Human beings had rights, and those rights were realized when there were mechanisms to enforce them. Targets, however, could be achieved or not achieved, withdrawn, or modified at any time. The achievement of the Millennium Development Goals did not necessarily create the basis for citizens to demand accountability from Governments and international financial institutions in their economic reform and debt policies.

38. There was additional problem in that the Millennium Development Goals stipulated outcomes, but made no mention of process, which was extremely important from a human rights perspective. The use of national averages in monitoring the achievement of the Millennium Development Goals contributed to the neglect of disparities, exploitation and marginalization, which were the problems addressed by human rights.

39. One expert argued that incorporating the Millennium Development Goals into the debt sustainability framework would provide an opportunity for States to be able to start quantifying the resources needed to fulfil human rights obligations. He also emphasized that the Goals must never be taken out of the context of the United Nations Millennium Declaration, which emphasized commitment to the realization of internationally recognized human rights as the context in which development goals must be set.

40. In the report of the high-level task force on the implementation of the right to development (E/CN.4/2005/WG.18/2), which the Working Group on the Right to Development at its eighth session noted with appreciation, the task force identified debt sustainability as one of the constraints in attaining the Millennium Development Goals. The task force agreed that it would indeed be a challenge for human rights, including the right to development framework, to be incorporated in the realization and implementation of the Goals. Some of the challenges would include: first, combining specificity with getting States to focus on universally recognized and legally binding instruments as one of the strategies for the achievement of the Millennium Development Goals; second, the notion of the interdependence and indivisibility of human rights; third, the need for accountability

³ General Assembly resolution 60/1, para. 26 (b).

mechanisms at the national and international levels that are participatory in nature, accessible, transparent and effective; lastly, the mobilization of civil society to act as a monitoring body for development efforts to ensure that the MDGs were achieved in a rights-based manner (ibid., paras. 36 and 37).

41. The task force described debt burden as a major obstacle for poor developing countries in realizing the Millennium Development Goals. It welcomed and encouraged efforts by donor countries and IFIs to consider additional ways to promote debt sustainability "including through the provision of grants, additional finance for debt relief over the Heavily Indebted Poor Countries (HIPC) social spending norms, as well as debt swaps linked to performance, in realizing the Millennium Development Goals in a rights-based manner" (ibid., para. 48). The task force argued that analysis of debt sustainability was dependent on a variety of variables and should thus be comprehensive and forward-looking, taking into account country specificities.

IV. Human rights and economic reform policies

A. Trade reforms

42. In a presentation at the expert consultation a participant noted that WTO was not a human rights body and had its own mission and objectives. Its mandate included the facilitation of technical cooperation between countries and encouraging market access for economies across the globe. The basic rule of the General Agreement on Tariffs and Trade had been to facilitate trade and to encourage countries to make commitments on market access.

43. WTO recognized in its agenda that trade policy itself was no longer sufficient. Its Director-General, Pascal Lamy, had started a new discussion called the "Geneva consensus". In summary, the "Geneva consensus" argued that trade was beneficial to welfare, but never sufficient. Other domestic and international policies were needed to ensure the effectiveness of market opening. Secondly, the challenges of market opening and globalization for developing countries were very important, and therefore warranted international action⁴ from a human rights perspective.

44. According to the participant, trade negotiations aimed to alleviate poverty. The new WTO programme of aid for trade included encouraging trade opening to be analysed individually for each country. Currently, developing countries were treated as a group and trade negotiations did not take into account the different costs, subsidies and specific situation of each country.

45. Some experts, particularly those from civil society, argued that trade policies and agreements should indeed take into account the state of local economies. Although there should be non-discrimination in human rights terms, in this case the rules should allow different treatment favouring the poor and ensuring a more level playing field. In other words, there was a need in trade negotiations for affirmative action for the weak. Trade policies, agreements and any form of trade liberalization should take into account domestic situations, for example in the areas of industrial employment, agriculture and intellectual property rights. The participant strongly

⁴ See http://www.wto.org/english/news_e/sppl_e/sppl45_e.htm.

argued that basic economic, social and cultural rights such as the rights to health, food and education should be ensured when trade rules were negotiated. Several experts reiterated that human rights should be at the centre of trade rules.

46. Trade policy reform decisions were often taken by domestic politicians in the capitals. This could be both an advantage and a disadvantage, given that decisions could be made not on sound economic judgement but for ideological reasons or reasons of electoral politics. However, it was also important to bear in mind that trade policies were also influenced by IFIs.

47. One way different stakeholders, including States and IFIs or WTO, could incorporate human rights into their policies was by carrying out human rights impact assessments during negotiations, or encouraging trade agreements or increased market access. However, as pointed out by a participant, many States did not have the capacity to carry out human rights impact assessments.

48. One expert commented that the language on trade in the guidelines would need to be aimed specifically at trade specialists or, as an alternative, that the guidelines should have different sections drafted for different audiences of decision makers and different contexts.

B. Macroeconomic stabilization and social sectors

49. Participating experts from the international financial institutions argued that to achieve macroeconomic stabilization of a country, there were trade-offs that needed to be taken into account. One welcomed the reference in the guidelines (under the section on macroeconomic stabilization) stating that economic policy reform often required difficult trade-offs, giving as examples the positive impacts of price stability as well as extended public (social) expenditure, both of which were considered conducive to the improved achievement of human rights objectives.

50. Macroeconomic stabilization policies should not be pursued at the expense of diminished investment in the social sectors such as education, health, water and adequate housing. In some cases, the World Bank would finance social programmes that targeted social resources to certain social sectors in developing countries. In recent years, improved economic performance of some developing countries appeared to have been the result of better management of macroeconomic policies. The presentation also highlighted some examples of how to cut budget deficits, including increasing revenue through taxes. However, it noted that imposing high taxes could have a very negative impact. Inflation was described as the worst possible tax, which would hit the poor and vulnerable. Instead, countries should move towards price stability.

51. IMF was often accused of setting rigid price stabilization targets for countries, taking a very restrictive view when inflation was high. The Fund, however, had always responded that it was the responsibility of the country concerned to set its own inflation target in order to be a responsible debtor and to work with its own specificities. However, critics of the Fund were concerned at the alleged lack of transparency and accountability with which it formulated its programmes and engaged in discussions with countries that took on a loan repayment programme. Such critics called on the Fund to make negotiations as transparent as possible and to include a variety of stakeholders during the whole process.

52. One human rights expert pointed out that it was important for the human rights community to be reminded that IFIs had a different vision, a finance-based vision with its own form of governance. Often, during the interactive dialogues of the Committee on Economic, Social and Cultural Rights, States argued that they were doing "their best" in the implementation of economic, social and cultural rights at the national level. However, the Committee often found that States almost invariably resorted to limiting their public expenditures in the social sectors. IFIs should consider that when formulating policies, macroeconomic management should not cut into social spending, which would then cause the State to fail to fulfil its human rights obligations.

C. Privatization

53. Some participants noted that the World Bank had not been particularly active in advising countries to privatize State enterprises. Privatization of social services such as health and education could result in the poor and the vulnerable no longer having access to basic social services.

54. One participant regretted that it was usually companies that were actually profitable for the State that were sold and privatized. Another unfortunate trend was the privatization of natural resources to ownership by transnational corporations.

55. Another participant from civil society questioned who would decide which social sectors or local industries needed to be privatized. He argued that privatization was often a loan condition imposed by IFIs. In addition, often neither IFIs nor the Government concerned held themselves accountable. He questioned whether in the long term the State was actually better off after privatizing. In the context of sub-Saharan Africa, given that there was a rather underdeveloped private sector, the participant argued that privatization would mean that basic services would not stay in the hands of locals but be transferred to large transnational corporations from industrialized countries.

56. The draft guidelines suggested that the decision to privatize public enterprises should not be based only on economic considerations but also on a thorough analysis of the need to ensure access by vulnerable groups to human rights-related goods and services. Several participants argued that article 2 of the International Covenant on Economic, Social and Cultural Rights should be understood to call for countries not to privatize basic services such as health and education.

57. Some participants argued that international assistance should not be tied to any pre-conditions regarding a specific type of ownership of key enterprises, as such conditions could be seen as contrary to the human rights obligation to ensure the enjoyment of the minimum content of rights, regardless of economic difficulties.

V. Human rights responsibilities of international financial institutions with regard to human rights

58. In the initial presentation on the minimum standards of economic, social and cultural rights it was noted that the main concern regarding international financial institutions' lending practices and so-called "conditionality" was that they were seen to undermine the accountability of States to their citizens, including their human

rights obligations, and instead engendered government accountability only to commitments to the institutions. If those commitments were negotiated and monitored without concern for international human rights obligations, then human rights commitments lost out. Unfortunately, commitments to the international financial institutions had stronger enforcement provisions than human rights obligations. The extent to which macroeconomic policy reforms might run counter to a borrowing country's human rights obligation under the International Covenant on Economic, Social and Cultural Rights or other international human rights treaties was virtually absent from the institutions' policy considerations. It was suggested that the World Bank/IMF also did not consider the human rights obligations of States so as to refrain from enforcing conditions that undermined such human rights obligations.

59. Yet, it was argued that when one studied the principles and provisions contained in the basic documents of IFIs and how they matched up to obligations, one could read human rights language into them even if they were not stated in rights-based terms. The World Bank's former Senior Vice-President and General Counsel, Robert Danino, had made clear that the Bank was engaged in human rights.

60. Other financial institutions, such as IMF, did not recognize a responsibility to engage in human rights analysis. Its Legal Department had done some analysis of how the Fund could start to engage in human rights issues; however, it concluded that the Fund was unable to do so as that could run counter to the Articles of Agreement of the Fund.

61. Participants also suggested that under international law, IFIs also had legal personality and were arguably bound by the terms of customary international law. Disregard of human rights by the World Bank or IMF reflected the failure of the member States that comprised those institutions to abide by their international human rights obligations.

62. A participant noted that IFIs were multi-State actors; they were international bodies made up of member States. The same member States had signed and ratified a variety of human rights conventions and were bound under international law. It was common practice in today's global world order for stronger member States to dictate terms and conditions, including economic reform policies, to poorer, less economically powerful States.

A. Obligations of debtor States

63. The human rights framework recognized individuals as rights holders having a particular set of entitlements and debtor States as duty bearers having a particular set of obligations. It was often remarked that the rights of vulnerable groups, marginalized sections of the population, in particular the poor and the disempowered, were negatively affected by economic policies. A participant pointed out that unless there was a legal framework in place in the debtor States, it would be difficult to provide a proper avenue for a vulnerable group to articulate concerns when it came to design and implementation of external debt and economic reform policies.

64. Another participant stated that debtor States should recognize that they did have human rights obligations with regard to the process and outcome of designing and implementing economic reform and foreign debt policies. He argued that debtor States did not sufficiently recognize the human rights consequences and impact of economic reform and foreign debt policies. He reminded all stakeholders of the affirmation of the Commission on Human Rights in its resolution 2000/82 that "the exercise of the basic rights ... cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from debt".

65. Debtor States should develop a legal framework that would ensure that their human rights obligations were recognized. Many participants noted with concern that policies relating to structural adjustment programmes, foreign debt relief and economic policies did not generally undergo an internal examination on the basis of their implications for the protection and promotion of human rights.

66. Some of the challenges that debtor States faced included the lack of resources, odious debt, the lack of good governance, accountability, transparency and corruption. A participant pointed out that it was difficult for States to service their debt if they could not guarantee food or human security for their populations. Several experts also mentioned the key role that the poverty reduction strategy papers played in recognizing previous regime debts that were taken on by the current regime of a State.

67. On 13 October 2005, the Government of Norway issued the Soria Moria Declaration on International Policy, stating that: "The [United Nations] must establish criteria for what can be characterized as illegitimate debt, and such debt must be cancelled", and that it would "support the work to set up an international debt settlement court that will hear matters concerning illegitimate debt". Non-governmental organizations had also argued in favour of the establishment of a fair and transparent arbitration process in relation to odious debts, noting that "existing mechanisms for debt relief (HIPC Initiative, the Paris Club and the London Club) are run entirely by creditors, violating the most basic rules of impartiality and transparency".⁵

68. A participant argued that there needed to be some degree of flexibility in the implementation of the programmes set out by IFIs and creditor States. He also argued that although measures could be taken to improve the transparency of negotiations between the debtor and creditor States and IFIs, barriers such as a high rate of illiteracy among the population could prove to be a major barrier in making the process more transparent.

69. The governance framework of a country was shaped by a number of policy and institutional priorities, argued another expert. Increasingly, the development policies of a particular State were shaped by the understanding of the impact of those policies on the lives of people. That concept was more important when referring to debtor States. The problem of corruption, in any way or form, undermined and negatively affected the efficient and effective use of resources. At the outset, corruption affected the design and implementation of external debt and economic reform policies. It manipulated development goals and increased the gap between what people expected from development and the actual results of development. The

⁵ *Odious Lending. Debt relief as if morals mattered*, New Economic Foundation, 2006, p. 21.

more important requirements for corruption-free governance included the need to promote transparency and accountability.

70. Although debtor States were the primary guarantor of the human rights of their populations, creditor States and IFIs also played a critical role in ensuring access to rights.

B. Obligations of creditor States

71. Creditors should and must take reasonable measures to find out what their loans are being used for, and should be responsible for the role their loans played. More particularly, creditors should also take into account the role that conditionality played in impeding or facilitating access to human rights.

72. A participant pointed out that creditor States should have an obligation to carry out impact assessments to ensure that their loans did not have negative effects and did not impede the ability of debtor States to uphold their minimum human rights obligations.

73. It was important to note that all the members of the Paris Club and members of the European Union had ratified the International Covenant on Economic, Social and Cultural Rights and were therefore obligated to comply with its provisions. The United States, which had only signed and not ratified the Covenant, was still obligated to refrain from taking action that would go against the objective and purpose of the treaty.

74. States' obligations could derive from treaty law or customary international law. A participant argued that it was important to articulate human rights issues under customary international law for two reasons. Firstly, more often than not, States had obligations under multiple legal regimes, including the conditions of contracts with IFIs and transnational corporations, which might come into conflict with their human rights obligations. Secondly, customary international law pertaining to economic, social and cultural rights bound non-State parties to the Covenant so long as they had not established their status as persistent objectors to the norm. She also argued that customary international law protected the most fundamental human rights, and as a general matter applied to all States. Many scholars and international law experts believed that the minimum core of the main economic, social and cultural rights had become customary international law and were thus binding on all States, regardless of whether they had signed or ratified the Covenant.

75. When the State had ratified a human rights treaty, including the International Covenant on Economic, Social and Cultural Rights, it had the duty to take positive steps towards the realization of the rights therein. At the outset, the Government had assumed three types of obligations: obligations to respect, protect and fulfil. The obligation to respect required Governments to refrain from interfering directly or indirectly with the enjoyment of an individual's rights. The obligation to protect required Governments to prevent the violation of human rights by others. Lastly, the obligation to fulfil required Governments to adopt the necessary measures to achieve the full realization of rights.

76. The participant further argued that there were no provisions under the Covenant that concretely specified its jurisdictional scope. However, under the general obligation of international cooperation, States parties to the Covenant must

respect and protect social and economic rights extraterritorially regardless of whether jurisdiction was exercised abroad.

77. Article 2 (1) of the Covenant provided that "[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". A participant noted that a strict interpretation of article 2 created a special responsibility for creditors to ensure as a loan conditionality that the countries concerned were able to fulfil their minimum human rights obligations while servicing their debt.

78. The Committee on Economic, Social and Cultural Rights had elaborated general comments on the rights to food, health and water. In those general comments, the Committee highlighted the obligations to respect and protect, or the negative obligations related to international cooperation, over the obligation to fulfil. In the context of obligations to respect and protect economic and social rights extraterritorially, States should be wary of involvement in extraterritorial violations that could take place, for example, through IFIs.

VI. Concluding observations and the way forward

79. The independent expert wishes to thank the Office of the High Commissioner for Human Rights for organizing the expert consultation and the experts for their participation and for providing invaluable input towards the finalization of the drafting of "general guidelines to be followed by States and by private and public, national and international financial institutions in the decision-making and execution of debt repayments and structural reform programmes, including those arising from foreign debt relief, to ensure that compliance with the commitments derived from foreign debt will not undermine the obligations for the realization of fundamental economic, social and cultural rights, as provided for in the international human rights instruments".

80. The independent expert would also like to thank the General Assembly for the opportunity to apprise it of the current status of his efforts to draft those general guidelines. He is now considering the various suggestions and recommendations of the experts and other stakeholders with a view to deciding what would best inform the final text of the guidelines, and will submit the same to the Human Rights Council whenever the latter deems appropriate.

81. He would further like to call on the International Monetary Fund and the World Bank to continue their constructive engagement with his work so that the final draft guidelines fully benefit from their respective inputs and rich experiences concerning the issues in question. In this regard, he recalls that the ultimate objective of the guidelines is to be seen by both the human rights community and the international financial institutions as a useful tool that bridges operational gaps, encourages coherence, and seeks to provide an integrated and easily accessible tool in the policymaking process of both Governments and international organizations.

82. The independent expert wishes moreover to underscore the importance of coordination and complementarity of effort among the various actors within the international community. It is therefore his intention to consult with members of the Committee on Economic, Social and Cultural Rights as well as the members of the high-level task force on the implementation of the right to development to make sure that the final draft guidelines incorporate all elements of their work that are relevant to the task he has been assigned.

83. Finally, the independent expert reiterates the crucial role of non-State actors, in particular non-governmental organizations, in monitoring and playing an active role in lobbying IFIs to insist on the inclusion of minimum human rights core content, in particular economic, social and cultural rights, whenever economic reform policies are designed or formulated.

Annex I

Agenda of the expert consultation

<i>Time</i>	<i>Item</i>	<i>Title</i>	<i>Issues</i>
Day 1			
10.00-10.30	1	Opening session	• Opening speech, presentation of meeting objectives • The structure of the draft guidelines on a human rights-consistent design and implementation of foreign debt and economic reform policies in developing countries
10.30-11.00	2	Economic, social and cultural human rights minimum standards	• Presentation of the minimum economic, social and cultural human rights standards that policy in the area of debt and economic reform should respect
11.00-12.30	3	Debt sustainability	• Presentation of the current World Bank/ International Monetary Fund concept of debt sustainability and its link with human rights • Ideas for an alternative debt sustainability concept based on poverty reduction and human rights objectives • Open discussion, including questions of operationalization and policy consequences of different debt sustainability concepts for creditors and borrowers.
14.30-16.15	4	Trade	• Presentation on potential positive and negative impacts of trade reform elements on economic, social and cultural human rights • Open discussion on how trade reforms and agreements should be designed in order not to undermine human rights obligations
16.15-18.00	5	Macroeconomic stabilization, privatization, social sectors	• Examples of policy recommendations in the area of macroeconomic stabilization, privatization and social sector reform and their link with economic, social and cultural human rights • Discussion on what "best practices" can be drawn from past experience

<i>Time</i>	<i>Item</i>	<i>Title</i>	<i>Issues</i>
Day 2			
10.00- 11.30	6	Governance and human rights obligations of debtor States	• Human rights obligations of debtor States regarding the process and outcome of designing and implementing economic reform and foreign debt policy • Open discussion
11.30- 13.00	7	Human rights obligations of creditors	• Human rights obligations of creditor States and institutions, including joint responsibilities with debtor States, regarding the process and outcome of designing and implementing economic reform and foreign debt policy • Open discussion
15.00- 17.10	8	Role of human rights actors	• Current and potential role of the human rights system and mechanisms, in particular with regard to normative advice, and participation in and monitoring of economic reform and foreign debt policy • Open discussion
17.10- 17.30	9	Wrap-up	

Annex II

List of participants

<i>Name and nationality</i>	<i>Functional title</i>
Rocio Barahona Riera Costa Rica	Member, Committee on Economic, Social and Cultural Rights
Geoff Barnard Canada	Representative of the International Monetary Fund to the United Nations and the World Trade Organization
Aldo Caliori Argentina	Coordinator, Center of Concern
Caroline Dommen United Kingdom of Great Britain and Northern Ireland	Executive Director, 3DThree
Heather Grady United States of America	Director, Policy and Partnerships, Realizing Rights: Ethical Globalization Initiative
Eva Hanfstaengl Germany	Board member, Erlassjahr (German Jubilee Campaign)
Barry Herman United States of America	Senior Visiting Fellow, The New School
Robert Howse Canada	Professor of Law, University of Michigan Law School
Raja Khalidi United States of America	Officer in charge, Debt and Development Finance Branch, Division on Globalization and Development Strategies, United Nations Conference on Trade and Development
Martin Khor Malaysia	Executive Director, Third World Network
Panos Konandreas Greece	Senior Liaison Officer, Food and Agriculture Organization of the United Nations Liaison Office in Geneva
Raj Kumar India	Associate Professor, School of Law, University of Hong Kong
Steve Mandel United Kingdom of Great Britain and Northern Ireland	Senior Economist, New Economics Foundation
Gabriella Marceau Switzerland	Office of the Director-General, World Trade Organization

<i>Name and nationality</i>	<i>Functional title</i>
Françoise Medegan Benin	Premier Conseiller — Delegation Benin First Counsellor, Permanent Delegation of Benin to the United Nations Educational, Scientific and Cultural Organization
Jean Merkaert France	Chargé du programme financement du développement, Comité catholique contre la faim et pour le développement
Bernards Mudho Kenya	Independent expert on the effects of economic reform policies and foreign debt
Charles Mutasa Zimbabwe	Executive Director, African Forum and Network on Debt and Development
Smita Narula India	Assistant Professor of Clinical Law and Faculty Director, New York University
Richard Newfarmer United States of America	Special Representative of the World Bank to the United Nations and the World Trade Organization
Ugo Panizza Italy	Chief of Debt and Finance Analysis, Debt and Development Branch, Division on Globalization and Development Strategies, United Nations Conference on Trade and Development
Patrick Reichenmiller Switzerland	Policy Analyst, World Bank Office Geneva
Ibrahim Salama Egypt	Chair, Working Group on the Right to Development
Nicholas Sersison France	Committee for the Abolition of Third World Debt
Saidou Sidibe Niger	International consultant and former Minister of Finance of Niger
Thoralf Stenvold Norway	Senior Adviser, Social and Sustainable Globalization, Ministry of Foreign Affairs
Celine Tan Malaysia	Member, Third World Network
Elisabeth Tuerk Austria	Economic Affairs Officer, Division on International Trade and Commodities, United Nations Conference on Trade and Development